

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
PRECON ENTERPRISES, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 86-102

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

THIS MATTER, the appeal of a notice and order of civil penalty for \$1,000 for purportedly unauthorized and unsafe removal of asbestos from an old high school located in Seattle came on for hearing before the Board on July 23, 1986, at Lacey, Washington. Seated for and as the Board were; Lawrence J. Faulk (presiding) and Wick Dufford. Pursuant to Chapter 43.21B.230 RCW respondent PSAPCA elected a formal hearing and the matter was officially reported by Gene Barker and Associates.

Respondent public agency appeared and was represented by Keith D.

1 McGoffin. Appellant PreCon Enterprises, Inc. was represented by its  
2 president Ken Olson.

3 Witnesses were sworn and testified. Exhibits were admitted and  
4 examined. Argument was heard. From the testimony, evidence, and  
5 contentions of the parties the Board makes these

6 FININDGS OF FACT

7 I

8 The Puget Sound Air Pollution Control Agency (PSAPCA) is an  
9 activated air pollution control authority under terms of the state's  
10 Clean Air Act, empowered to monitor and enforce federal and state  
11 emissions standards for hazardous air pollutants, including work  
12 practices for asbestos.

13 PSAPCA has filed with the Board certified copies of its  
14 Regulations 1 and 2, of which we take official notice.

15 II

16 PreCon Enterprises, Inc. is a demolition contractor located in  
17 Bothell, Washington which has been in business approximately twelve  
18 years. They specialize in demolition having to do with remodeling of  
19 commercial buildings. This particular case involves the remodeling of  
20 Queen Anne High School in Seattle into condominiums. In earlier days  
21 asbestos was used as insulation in the school (built in 1929), as in  
22 many other older buildings in the city.

23 III

24 On March 25, 1986, at approximately 4:15 p.m. a PSAPCA inspector,  
25 having received advance notice of asbestos removal operations,

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER  
PCHB No. 86-102

1 conducted an inspection of the former high school where interior  
2 demolition in connection with remodeling was taking place. The school  
3 consisted of a number of structures, and, thus the project involved  
4 work in several adjacent buildings.

5 On the third floor of building #2, the inspector discovered an  
6 area where asbestos wrapped pipes in an air shaft had been damaged. A  
7 small amount of asbestos debris had been knocked off the pipe and was  
8 lying on the floor. The asbestos debris was not wet nor was the area  
9 sealed off. Samples of the asbestos debris were taken for analysis.

10 In addition, the inspector noted some asbestos wrapped pipes lying  
11 on the floor of another building where demolition activities were in  
12 progress.

13 The inspector discussed the regulations dealing with asbestos  
14 removal with representatives of the general contractor and the  
15 appellant. The representative of the general contractor indicated  
16 that he would have a qualified asbestos removal contractor remove the  
17 asbestos the next morning.

#### 18 IV

19 On the following day, March 26, 1986, PSAPCA's inspector returned  
20 to the third floor of building #2 and observed that the asbestos on  
21 the floor had been cleaned up. However, some asbestos remained on the  
22 pipes in the shaft and it was loose allowing asbestos fibers to be  
23 released to the ambient air. Later on, a qualified removal contractor  
24 properly cleaned up all the asbestos.

V

The events which led to the incident of the third floor of building #2 are these. Precon was attempting to take down a wall in an old bathroom. This wall was made of four inch blocks piled about 13 feet high. Behind the wall was a narrow air shaft, perhaps two feet wide, but completely sealed from view. The opposite wall contained the bathroom's plumbing where insulated piping would be most expectable.

A hole was cut on the interior edge of the air shaft and the workers looked in. It was very dark; no pipes were visible. No attempt was made to shine a light inside. The assumption was made that the shaft was empty.

The plan was to fell the wall toward the interior of the room. However, when this was attempted, the wall refused to cooperate and instead of falling inward the entire thing fell down the air shaft. When the dust cleared, it became apparent that there were three insulated pipes running vertically through the shaft at its far end and that some of the insulation had been knocked off.

It was one of those afternoons when nothing went right.

VI

On the dates in question the interior demolition job had been in progress for several months, asbestos had frequently been encountered, and proper removal operations had been carried out in a number of instances.

Under the circumstances, a more thorough investigation of the air

1 shaft should have been conducted.

2 VII

3 After the follow-up inspection PSAPCA issued Notice of Violation  
4 No. 021374, to appellant PreCon Enterprises for alleged violation of  
5 WAC 173-400-075 (Emission Standards for Sources Emitting Hazardous Air  
6 Pollutants) and Section 10.04 of Regulation I, Procedures for Asbestos  
7 Emission Control.

8 VIII

9 On April 1, 1986, the Department of Ecology laboratory analyzed  
10 the samples collected by the inspector on March 26, 1986. The report  
11 showed that one sample contained 65% chrysotile asbestos and one  
12 sample contained 80% chrysotile asbestos. The agency followed  
13 standard procedures regarding chain of custody and care of the samples  
14 taken.

15 On May 20, 1986, PSAPCA mailed Notice and Order of Civil Penalty  
16 No. 6446 for \$1,000 to PreCon Enterprises, Inc., alleging a violation  
17 of applicable asbestos work practices. The notice was received May  
18 21, 1986. Feeling aggrieved by the penalty, appellant filed an appeal  
19 with this Board which we received June 20, 1986.

20 IX

21 Asbestos is one of only six pollutants classified federally as a  
22 "hazardous air pollutant." The term describes a substance which  
23 causes, or contributes to, air pollution which  
24 may reasonably be anticipated to result in an  
25 increase in mortality or an increase in  
26 serious irreversible, or incapacitating  
27 reversible, illness.

1 Asbestos then, is very dangerous indeed. It is subject to a special  
2 set of work procedures and emission limitations (under Section 112 of  
3 the Federal Clean Air Act) called National Emission Standards for  
4 Hazardous Air Pollutants. The threshold for regulation is any  
5 material containing more than one (1)% asbestos.

6 X

7 Any Conclusion of Law hereinafter determined to be a Finding of  
8 Fact is hereby adopted as such.

9 From these Facts, the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over these persons and these matters.  
13 Chapters 70.94 and 43.21B RCW.

14 II

15 The Legislature of the State of Washington has enacted the  
16 following policy regarding cooperation with the Federal government,  
17 which reads in relevant part:

18 It is the policy of the state to cooperate  
19 with the federal government in order to insure  
20 the coordination of the provisions of the  
federal and state clean air act (RCW  
70.94.510).

21 III

22 Pursuant to this and other legislative authority, the state  
23 adopted WAC 173-400-075 (1) which provides:

24 The emission standards for asbestos, benzene  
25 from fugitive emission sources, beryllium,  
beryllium rocket motor firing, mercury and  
26 vinyl chloride promulgated by the United

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB No. 86-102

1 States Environmental Protection Agency prior  
2 to October 1, 1984, as contained in 40 CFR  
3 Part 61, are by this reference adopted and  
4 incorporated herein.

5 From context it appears that the state regulation is designed to  
6 incorporate the work practices mandated federally for handling these  
7 substances.

#### 8 IV

9 PSAPCA has adopted its own regulations on removal of asbestos  
10 which are equal to or more stringent than the federal/state  
11 regulations. Among these is Section 10.04 (a) which reads:

12 It shall be unlawful to cause or allow any  
13 wrecking or dismantling that may break up  
14 asbestos materials before removing all  
15 asbestos materials from a facility. However,  
16 asbestos materials need not be removed before  
17 wrecking or dismantling if:

18 (1) They are on a facility component that is  
19 encased in concrete or other material found  
20 equal by the Control Officer; and

21 (2) These materials are adequately wetted  
22 whenever exposed during wrecking or  
23 dismantling; or

24 (3) The asbestos materials will not be  
25 disturbed by the wrecking and they remain  
26 accessible for subsequent removal.

#### 27 V

28 We conclude that these requirements of Section 10.04(a) of  
29 PSAPCA's Regulation I. were violated by appellant's asbestos removal  
30 operation on March 25 and 26, 1986. Under the facts, the exceptions  
31 to the removal-before-dismantling requirement were not met.

#### 32 VI

33 Appellant's defense rests primarily on the assertion that they did

1 not know that asbestos wrapped pipes lay behind the wall they  
2 demolished; and that it was not planned for the wall to fall on the  
3 pipes. After asbestos was discovered, it was eventually removed  
4 properly by a qualified contractor. Worker exposure was not  
5 prologed. The incident was an isolated one in an otherwise exemplary  
6 job.

#### 7 VII

8 The Washington Clean Air Act and its implementing regulations are  
9 a strict liability regime. Exceeding the regulatory standards is a  
10 violation regardless of the reasons for the occurrence. Commercial  
11 and industrial operations are required to comply at all times.

12 Accordingly, ignorance of the presence of asbestos does not  
13 operate to excuse any violation which may attend a demolition job  
14 Further, although the presence of asbestos in the air shaft was  
15 unsuspected, an adequate preliminary investigation would have  
16 disclosed its presence. Therefore, we do not believe that the lack of  
17 knowledge should operate here in mitigation of the amount of penalty  
18 assessed.

#### 19 VIII

20 We conclude, therefore, that the assessment of a penalty for  
21 violation Regulation 1, Section 10.04(a), was proper. Moreover, we  
22 decide that, in light of all the circumstances--particularly the  
23 extraordinarily dangerous nature of asbestos--the amount of the  
24 penalty was reasonable and should be upheld.



X

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

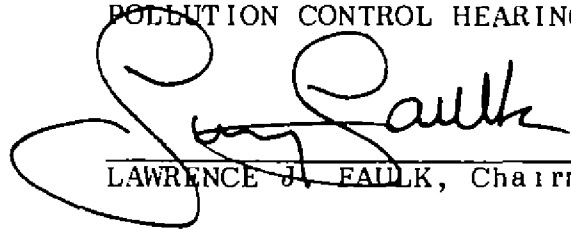
From these Conclusions, the Board enters this

ORDER

The Notice and Order of Civil Penalty (No. 6446) is affirmed.

DONE this 24 day of October, 1986

POLLUTION CONTROL HEARINGS BOARD

 10/3/86

LAWRENCE J. FAULK, Chairman



WICK DUFFORD, Lawyer Member